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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,251	03/27/2001	Hisao Hiramatsu	Q63803	8044

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
1723	3

DATE MAILED: 02/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
09/817,251	HIRAMATSU ET AL.	
Examiner	Art Unit	
Tony G Soohoo	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 27 March 2001.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_      6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 8-9 are rejected under 35 U.S.C. 112, first paragraph, because the best mode contemplated by the inventor has not been disclosed. Evidence of concealment of the best mode is based upon the lack of particular structure and the best mode to move the nozzle 3..

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 fails to provide antecedent basis for "the air" or the addition of air which may be discharged.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hargen 2432073.

Hargen teaches an apparatus and method for use in combination with a pan container (not shown) having opening at the top for access to the baster, and a liquid within the container.

Typically, it is known knowledge in basting methods to apply a meat product with juices including blood components from the pan container onto the food, see also, column 1, lines 1-12.

With regards to the method claims, the use of the device and its corresponding method requires the user to perform a dipping of the tube 2 into the pan at a given horizontal location between the meat and the container walls in order to access the basting liquid. Suction is applied via the piston 7 to pick up the liquid and some air in the chamber. Then, dispensing of the liquid is applied at a new horizontal position. This position is different from the suction position at which the liquid was taken from the pan, the dispensing of the liquid is typically above a meat product. The liquid is then delivered back into the pan at a different horizontal position than that of the sucking position since it drops off the sides meat. It is also noted that it is common knowledge

in the art of cooking, in particular to the practice of basting, to provide multiple suction of liquid and dispensed applications of more than "n" times whereby "n" is an integer of 2 or more whereby if "n" is increased, the meat may be less dry. Additionally, it is noted that since the device is manipulated by hand, the sucking and discharge position at a n location, would differ from that of the previous location (n-1) of the respective sucking and dispensing positions since indexing of the position is done by, and limited by, human physical factors, may not readily provide a duplication of the placement of the suction/dispensing position such that it is duplicate in position.

Thus, it is noted that the recited manipulative steps would satisfy the claimed method steps and that furthermore, the subsequent physical manipulate steps of suction of liquid and dispensed application of liquid falling back into the pan would thereby cause an outcome of a manipulative end effect of upon the liquid within the pan such that the liquid may be considered to be "stirred".

With regards to the apparatus claims, there is a means for sucking and discharging 2 the liquid, and a handle means 6 capable of horizontally moving the pipette (via the user's hand) so that it physically be capable of horizontally moving so that the liquid is discharged into the container at a position from that where the liquid has been sucked from the container. With regards to the apparatus claims, it is noted it has been held that the recitation that an element is capable to perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the

handle means or the user's hand provides the ability to perform the recited means plus function.

8. Claims 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Raczak 3656351.

Raczak teaches an apparatus for use in combination with a container (not shown) having opening at the top for access to the pipette, and a liquid within the container, whereby additionally there is a means for sucking and discharging the liquid 15, 58, and a handle means capable of horizontally moving the pipette (via the user's hand) so that it physically be capable of horizontally moving so that the liquid is discharged into the container at a position from that where the liquid has been sucked from the container. It is noted it has been held that the recitation that an element is capable to perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the handle means or the user's hand provides the ability to perform the recited means plus function.

9. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehman 3320053

Lehman teaches an apparatus and method for use in combination with an open top container 6 having an inclination on the sidewall of the container, which the

inclination increases in height toward the outside of the container (figure 1), and a liquid in the container.

With regards to the method claims, the use of the device and its corresponding method performs the steps of sucking liquid from the right side nozzle 2 into the chamber 3 and discharging it to a horizontally different position via the nozzle 5. Note that the liquid is discharged toward the inclination of the sides of the container 6 since the nozzle 5 is oriented in an outward direction towards the container inclined wall.

Additionally, it is noted that since the method provides multiple successive suction and discharge of the liquid

Thus, it is noted that the recited manipulative steps would satisfy the claimed method steps and that furthermore, the subsequent physical manipulate steps of suction of liquid and dispensed application of liquid would thereby cause an outcome of a manipulative end effect of upon the liquid such that the liquid may be considered to be "stirred".

#### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hargen 2432073.

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Hargen 2432073 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the container being used has the feature that the inside wall is inclined in a direction increasing in height toward the outside of the container.

It is old and well known in the art of containers and common knowledge to a person having ordinary skill in the art, and in particular within the art of pans, to provide inclined walls inclined in a direction increasing in height toward the outside of the container. It is commonly known that this provides a greater volume for a given base footprint, and may provide a greater opening area for easier access into the container and the container bottom.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the container used in Hargen's method, or substitute the container used in Hargen with a container having inclined walls inclined in a direction increasing in height toward the outside of the container so that it provides a greater volume for a given base footprint, and may provide a greater opening area for easier access into the container and the container bottom so that one may access the liquid surface in a more easier manner so that basting may be performed in a more effective operation.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raczak 3656351.

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Raczak 2432073 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the container being used has the feature that the inside wall is inclined in a direction increasing in height toward the outside of the container.

It is old and well known in the art of containers and common knowledge to a person having ordinary skill in the art, and in particular within the art of laboratory equipment containers, to provide inclined walls inclined in a direction increasing in height toward the outside of the container. It is commonly known that this provides a greater volume for a given base footprint, and may provide a greater opening area for easier access into the container and the container bottom.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the container used in Raczak's method, or substitute the container used in Raczak with a container having inclined walls inclined in a direction increasing in height toward the outside of the container so that it provides a greater volume for a given base footprint, and may provide a greater opening area for easier access into the container and the container bottom so that one may access the liquid surface with the pipette nozzle in a more easier manner so that removal or dispensing of the liquid within the pipette may be performed in a more effective operation.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose apparatus/methods directed to the suction and discharging of liquids from a container: Soellner 694210, Cline 160815, Parker

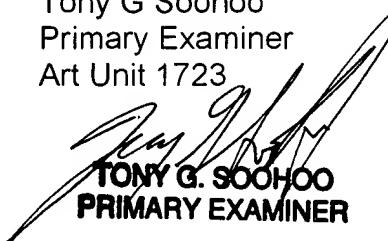
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25038, Munsing 1400309, Teel 2234884, Schaaff 2330149, Weichselbaum 3295523, Karkiewicz 4449827, Booth et al 3712591, Blum 1588693, Latto 5052813, Oguchi et al 4452634, Kutscher et al 4612044, Kawawa 3468525, Harders 2967768, Cline et al 4512665, Peters 4332484, Van Der Lely 3447787, Richter 3166300, Manabe et al 5810473, Barrington et al 5300232.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Tony G Soohoo  
Primary Examiner  
Art Unit 1723

tgs



TONY G. SOOHOO  
PRIMARY EXAMINER